

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA, :  
Petitioner, : Case No. 3:08mc00013  
vs. : District Judge Walter Herbert Rice  
TIMOTHY M. WORDEN, : Magistrate Judge Sharon L. Ovington  
Respondent. :  
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**REPORT AND RECOMMENDATIONS<sup>1</sup>**

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The United States of America brings this Petition to Enforce IRS Summons (Doc. #1) against Respondent Timothy M. Worden. The case is before the Court upon the Government's Notice (Doc. #5) explaining that it has been unable to locate Respondent and that "there no longer appears to be any reason to believe that the original IRS Summons were actually served on the Respondent." *Id.* at 1. The Government also states that there is apparently no collection potential against Respondent and that his whereabouts are unknown. *Id.* For these reasons, the Government asks the Court to withdraw the Order to Show Cause and dismiss this case. *Id.* at 2.

The Government's Notice establishes good cause for withdrawing the Order to Show Cause, and since the Government has not obtained effective service upon Respondent within 120 days of its filing of the Petition, dismissal of this case is warranted. *See* Doc. #5; *see also* Fed.

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<sup>1</sup> A NOTICE is attached hereto regarding Objections to this Report and Recommendations.

R. Civ. P. 4(m).

**IT IS THEREFORE RECOMMENDED THAT:**

1. The Order to Show Cause (Doc. #4) be withdrawn;
2. The Petition to Enforce IRS Summons (Doc. #1) be dismissed; and
3. The case be terminated on the docket of this Court.

December 18, 2008

s/ Sharon L. Ovington  
Sharon L. Ovington  
United States Magistrate Judge

## **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6<sup>th</sup> Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).